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J.W. Boyce (1884-1915)
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May 18, 1994

Re: Request for Ethics Opinion 94-8

Dear

You have requested an opinion from this Committee based upon the following facts.

FACTS

You are an attorney licensed and in good standing in Florida, Michigan and the District of Columbia. You have been advised by the Consumer Protection Committee for the State Bar of South Dakota that you do not need to be licensed in South Dakota to represent parties at grievance arbitration. You would like to direct mail advertisements to employers, primarily school superintendents. Your proposed advertisement is as follows:

GRIEVANCE ARBITRATION

[YOUR NAME] J.D., Ph.D.

Representing Management
[your phone number].

You have asked whether it is proper for you under the South Dakota Rules of Professional Conduct to send such direct mail advertisements.

OPINION

It is the opinion of this Committee that there is nothing improper about your proposed direct mail advertisement provided that you abide by the procedure safeguards of Rule 7.2 and 7.3. Under Rule 7.2(d), a copy of your written communication "shall be kept for two years after its last dissemination along with a record of when and where it is used." Rule 7.3(c) requires you to deposit

COPY

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your written communication "no less than 30 days prior to its dissemination or publication with the Secretary-Treasurer of the South Dakota State Bar by mailing the same to the office of the State Bar of South Dakota in Pierre, South Dakota, postage prepaid, return receipt requested." Finally, Rule 7.3(d) provides:

Every written or recorded communication from a lawyer soliciting professional employment from a prospective client shall include the words "Advertising Material" on the outside envelope, on the first page of any written communication, and at the beginning and ending of any recorded communication. Where the communication is written, the label shall appear in a minimum 18-point type or in type as large as the largest type otherwise used in the written communication, whichever is larger. This labeling requirement shall not apply to mailings of announcements of changes in address, firm structure or personnel, nor to mailings of firm brochures to persons selected on a basis other than prospective employment.

I am enclosing copies of the Rules cited above for your reference.

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman
Ethics Committee